

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 13, 2007

HUBERT JOHNSON v. STATE OF TENNESSEE

**Direct Appeal from the Circuit Court for Hickman County
No. 06-5006C Jeffrey S. Bivins, Judge**

No. M2006-01639-CCA-R3-HC - Filed June 1, 2007

The petitioner, Hubert Johnson, appeals from the circuit court's summary dismissal of his pro se petition for writ of habeas corpus. Following our review of the parties' briefs and applicable law, we affirm the circuit court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which DAVID G. HAYES and JERRY L. SMITH, JJ., joined.

Suzette Peyton, Nashville, Tennessee, for the appellant, Hubert Johnson.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder and Blind Akrawi, Assistant Attorneys General, for the appellee, State of Tennessee.

OPINION

In 1994, the petitioner was convicted of first degree murder and attempted first degree murder and sentenced to consecutive sentences of life imprisonment and fifteen years, respectively. The petitioner's convictions and sentences were affirmed on direct appeal. *State v. Hubert Johnson*, No. 03C01-9510-CR-00331, 1996 WL 526845 (Tenn. Crim. App., at Knoxville, Sept. 18, 1996), *perm. app. denied* (Tenn. June 30, 1996). Thereafter, the petitioner filed a pro se petition for writ of habeas corpus, alleging that his convictions were void because the trial court did not have jurisdiction or authority to enter the judgments of conviction due to the lack of convicting evidence. The Circuit Court of Hickman County dismissed the petition, finding no cognizable claim for relief. The petitioner appealed.

On appeal, the petitioner essentially claims his judgments of conviction are void because he was presumed innocent at trial and the evidence presented at trial was not sufficient to negate his defense of accident and that the victim was the first aggressor.

In Tennessee, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever, except [those held under federal authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint.” *Church v. State*, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998); *see also* Tenn. Code Ann. § 29-21-101 *et seq.* However, the grounds upon which a writ of habeas corpus may be issued are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record of the proceedings upon which the judgment was rendered that a court was without jurisdiction to convict or sentence the petitioner or that the petitioner is still imprisoned despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). The purpose of a habeas corpus petition is to contest void and not merely voidable judgments. *Archer*, 851 S.W.2d at 163. A void judgment is a facially invalid judgment, clearly showing that a court did not have statutory authority to render such judgment; whereas, a voidable judgment is facially valid, requiring proof beyond the face of the judgment to establish its invalidity. *See Taylor*, 995 S.W.2d at 83. The burden is on the petitioner to establish, by a preponderance of the evidence, “that the sentence is void or that the confinement is illegal.” *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). Moreover, it is permissible for a court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if the petition does not state a cognizable claim. *See Hickman v. State*, 153 S.W.3d 16, 20 (Tenn. 2004).

The petitioner is not entitled to habeas corpus relief. First, it is clear that the petitioner has not met his burden of proof in showing either a void judgment or an expired sentence. Rather, the petitioner is attempting to relitigate the sufficiency of the convicting evidence previously adjudicated on direct appeal. *See Johnson*, 1996 WL 526845 at *6. It is well-settled that a petitioner may not use habeas proceedings as a means to raise and relitigate issues previously ruled upon. *See Ray v. State*, 489 S.W.2d 849, 851 (Tenn. Crim. App. 1972). Likewise, challenges to the sufficiency of the evidence are not cognizable claims in a habeas corpus proceeding. *See Gant v. State*, 507 S.W.2d 133, 136 (Tenn. Crim. App. 1973). As the petitioner failed to assert a claim that would entitle him to habeas corpus relief, the circuit court’s summary dismissal of the petitioner’s habeas corpus petition was proper.

For the reasons stated herein, we conclude that the circuit court did not err by summarily dismissing the habeas corpus petition. The judgment is affirmed.

J.C. McLIN, JUDGE